[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J.

September 13, 1939.

PUBLIC PROSECUTOR v. TANGA MUTHU.

[TEMERLOH MAGISTRATE'S CRIMINAL APPEAL No. 2 of 1939]

Penal Code, S. 354—indecent assault on child—sentence.

In the case of assault with intent to outrage modesty and of other sexual offences against children the imposition of a fine only is not adequate punishment and the appropriate sentence should be one of rigorous imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

A. J. Grattan-Bellew, Ag. Deputy Legal Adviser, for Public Prosecutor.

Respondent in person.

The facts and arguments sufficiently appear from the Judgment below.

Poyser, C.J.—The respondent was originally charged with the attempted rape of a six-year old girl. The Magistrate after hearing the evidence came to the conclusion that there had been no attempt by the respondent to have actual intercourse with the child, but only an indecent assault, and the charge was therefore altered to one under section 354 of the Penal Code. The respondent then pleaded guilty, and was sentenced to a fine of $50 in default one month's rigorous imprisonment.

The fine has not been paid. The appeal is by the Public Prosecutor who asks the Court to enhance the sentence on the following grounds:—

(a) The Magistrate failed to appreciate the serious nature of the accused's acts towards the child, or the possible consequences of such acts on the mental outlook of the child.

(b) The Magistrate failed to take into consideration the age of the child.

(c) The sentence is inadequate and manifestly wrong.

I agree with the Public Prosecutor that to impose a fine in a case of this description is manifestly wrong. It is unnecessary on appeal to refer to the revolting details of the respondent's conduct; it is only necessary to state that it is at least open to doubt whether the conviction should not have been for attempted rape. I regard sexual offences against children as offences which should be most severely dealt with. It is true that the child in this case suffered no physical injuries, but she may have sustained irreparable moral injuries.

I enhance the sentence to one year's rigorous imprisonment, such sentence to date from the conviction by the Magistrate, *viz:* the 18th of August 1939.

Appeal allowed. Sentence enhanced.

[WORKMEN'S COMPENSATION]

RADCLIFFE, COMMISSIONER.

RE NARASAMAH DECEASED.

[PERAK WORKMEN'S COMPENSATION FILE No. 44 of 1939]

Workmen's compensation—weeding coolie—death by lightning—whether accident arose in the course of employment.

A female coolie engaged on weeding work on a rubber estate was killed by lightning which ran down a tree against which she was leaning during a heavy downpour of rain.

Held, that as the deceased by her employment as a weeding coolie on a rubber estate was exposed to no substantially greater danger of being struck by lightning than any other person who happened to be in that locality at the material time, the accident did not arise out of and in the course of her employment.

Cases referred to:—

(1) *Adamson v. George Anderson & Co. (1905) Ltd.,* (1913) W. Comp. Cas. 508.

(2) *Andrew v. Falsworth Industrial Society,* (1904) 73 L.J. 510.

(3) *Warner v. Couchman,* (1912) 81 L.J.K.B. 45.

WORKMEN'S COMPENSATION CLAIM.

C. R. Forsyth, Assistant Controller of Labour, for the Applicants, Appamah (f) and Malee.

H. R. Rix for the Respondent Employers, Cicely Rubber Estates Co., Ltd., Teluk Anson.

Radcliffe, Commissioner.—This has been by no means an easy case to decide and I am gratified to find Lord Loreburn saying in one of the cases cited to me.

> "There cannot be imagined a more difficult part of this act to determine upon than that which relates to what are injuries arising out of and in the course of the man's employment".

(*Warner v. Couchman*[3]). Nevertheless my task has been made appreciably easier by the assistance that I have received from the Assistant Controller